IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.837 OF 2005

Shri.Sandeep @ Babu Ankush More ...Petitioner

Versus

Shri H.V.Deshabhratar & Anr. ...Respondents

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Mr.U.N.Tripathi for Petitioner.

Mr.A.S.Gadkari, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

APRIL 7, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Gadkari, A.P.P. waives notice for Respondents.

3. As short question is involved, Petition is taken up for final disposal forthwith, by consent.

4. This Petition takes exception to the externment order passed by the Respondent No.1, which has been confirmed by the State Government in Appeal. Both these orders are subject matter of challenge in the present Petition.

5. It is not necessary to burden this order with factual matrix of the case. Suffice it to observe that two contentions have been raised before this Court and if the Petitioner was to make those contentions good, no other aspect need be examined.

6. The first contention raised on behalf of the Petitioner is that the competent Authority as well as the Appellate Authority have taken into account extraneous material to pass the final order, inasmuch as the material which has been reckoned for passing the final order, has not been referred to in the show-cause notice. In paragraph 1(b) of the externment order, it is stated that the Petitioner with his associates terrorises the people, whom he suspects to have informed the

Police about his criminal deeds and illegal activities by assaulting and threatening them at the point of lethal weapons which are offences punishable under Chapter XVI and XXII of the Indian Penal Code.

7. Learned A.P.P. is unable to point out that such allegation forms part of the show-cause notice which ignited the action against the Petitioner under Section 56 of the Bombay Police Act. Viewed in this perspective, the proceedings against the Petitioner, will have to be held as vitiated.

8. The second contention raised before this Court is that the Appellate Authority in para 9 of its order, has referred to a document, copy whereof was never supplied to the Petitioner. This specific plea has been taken in the present Writ Petition. No reply has been filed by the State, controverting this assertion.

9. During the course of argument, learned A.P.P. had no option but to accept, on

instructions, that the said allegation was correct. If it is so, proceedings before the Appellate Authority have vitiated on the vice of principles of natural justice.

10. Accordingly, neither decision of the Appellate Court, nor that of the competent Authority, can be sustained for the aforesaid reasons. Hence, this Petition succeeds. Both the impugned orders are set-aside.

11. While allowing this Writ Petition, it is made clear that it will be open to the Authorities to proceed against the Petitioner afresh in accordance with law, if there is sufficient material to resort to action under Section 56 of the Act against the Petitioner. Ordered accordingly.

A.M.KHANWILKAR, J.